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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/595,350  
Filing Date: April 12, 2006  
Appellant(s): BERI, MICHAEL

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Mathew R. Syrowik  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/16/10 and modified on 10/11/10 appealing from the Office action mailed 5/26/10.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 65, 70-83, and 86-88 are rejected. Claims 17-26 and 41-88 are pending. Claims 17-26, 41-64, 66-69, 84, and 85 have been withdrawn from consideration.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office

action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

2,879,866	Newell	3-1959
3,996,717	Salleneave	12-1976

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 65, 70-73, 75, 78, 79-82, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 2879866 to Newell.

Re: claims 65, 70-73, 75, 78, 79-82, and 86. Newell shows in figures 1, 2, and 6 a brake shoe assembly comprising: a brake shoe 23 having an outer radial surface, a plurality of receptacles 24 passing through the outer radial surface, and a plurality of

bore holes 26 in the outer radial surface for preassembled fasteners 17; and a brake plate 1, 21 having a cylindrical backing plate 1 and a frictional brake lining 21, wherein the cylindrical backing plate includes tangs 2 that are partially severed from the backing plate to mate with respective receptacles for resisting movement of the brake plate relative to the outer radial surface of the brake shoe without the tangs passing completely through the brake shoe, and a plurality of preassembled fasteners 17 spaced from the tangs (spaced from the remaining tangs, as broadly recited) and extending away from the brake lining and toward the brake shoe to facilitate alignment of the tangs with the receptacles, and wherein the frictional brake lining is molded to the backing plate to form a continuous molded layer that covers each of the preassembled fasteners, the brake lining being free of holes extending completely through the continuous molded layer; wherein the tangs and the receptacles supplement the preassembled fasteners in securing the brake plate to the brake shoe and particularly resist shear forces between the brake plate and brake shoe.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 74 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell.

Re: claims 74 and 83. With regards to the tangs and receptacles being a particular shape, for example rectangular, Examiner notes that in *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) the court held that the configuration of a claimed object was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration was significant.

5. Claims 76 and 87 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Newell.

Re: claims 76 and 87. With regards to the punching limitation Examiner notes that MPEP 2113 states "[e]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production.

6. Claims 77 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell in view of US Patent 3996717 to Sallenave.

Newell describes the invention substantially as set forth above including the limitation of a plurality of fasteners, but is silent with regards to the plurality of fasteners being threaded clinch stud bolts.

Sallenave teaches in figure 1 the use of a plurality of fasteners used in connecting components being in the form of threaded clinch stud bolts 4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the plurality of fasteners of Newell to have included

threaded clinch stud bolts, as taught by Sallenave, in order to provide a functionally equivalent means of securely connecting two components.

#### **(10) Response to Argument**

Appellant argues on page 9 of the Brief that the brake shoe (10) of the invention is not equivalent to the brake shoe (23) of Newell since the brake shoe (10) of the invention is not secured to a brake head. In determining whether a rejection is proper one must consider whether the applied reference includes the elements of the claim not whether the invention has the elements of the reference as Appellant suggests. Examiner maintains that the brake shoe (23) reads on the claim language as recited. The arrangement of the brake shoe with respect to the brake head is not relevant since a brake head is neither required nor precluded by the claim language.

Next, Appellant argues on page 9 that the brake shoe of Newell does not have tangs to resist shear forces between the backing plate and the brake head. Examiner notes that the argument is more specific than the claim language. The last three lines of claim 65 simply require that the tangs resist shear forces between the brake plate and brake shoe. Examiner maintains that the tangs (2) of Newell resist shear forces between the brake plate (1, 21) and brake shoe (23) through the cooperation of the tangs with the brake shoe in the same way that the tangs (46) of the instant invention resist shear forces between the brake plate (16) and brake shoe (10) through the cooperation of the tangs with the brake shoe.

Appellant then argues on page 10 and at the bottom of page 12 of the Brief that unlike Newell, the friction lining (20) of the invention is molded directly to the backing

plate (18). Examiner disagrees. Although the claims do not require that the lining be molded directly to the backing plate, Examiner notes that Newell clearly shows the lining (21) being molded directly to the backing plate (1). This argument as well as the arguments that Examiner is referring to the wrong interface in Newell appear to be based on Appellant's belief that element (23) of Newell is the backing plate. Examiner reiterates that for the purposes of the 103 rejections the backing plate of Newell is element (1). It is well-known in the brake art that the backing plate is the structure that carries the lining. Backing plate (1) of Newell is clearly shown as carrying the lining (21) similar to the way in which backing plate (18) of the instant invention carries the lining (20). The backing plate (1) of Newell is then attached to the brake shoe (23) similar to the way in which the backing plate (18) is attached to the brake shoe (10) of the instant invention. Since Newell and the instant invention are similarly arranged, Appellant's suggestions that Examiner is referring to the wrong interface and is improperly considering the Newell element (1) a backing plate are incorrect.

In the middle of page 10 of the Brief Appellant argues that "[u]nlike Newell, the brake shoe assembly as recited in Claims 65 and 78 includes tangs/projections (46) and a plurality of preassembled fasteners (30). Newell does not describe a brake shoe assemblage that includes each of these two different sets of elements." Examiner disagrees and notes that Newell shows tangs/projections (2) and a plurality of preassembled fasteners (17) in figures 1, 2, and 6. The preassembled fasteners are also disclosed in col. 1 lines 51-55 of Newell. Appellant further argues that elements (2) of Newell are actually countersunk areas of the plate (1) and that Newell gives no



indication that elements (2) extend from the backing plate. Examiner first notes that Appellant labeled elements (46) of the instant inventions as "tang/projections" on page 10 of the Brief. The label suggests that tangs are projections and that the two terms are interchangeable. Elements (2) of Newell are projections since they are clearly shown to project or extend downwardly from the backing plate 1 as shown in figures 1, 3, and 6. Since elements (2) are projections, they are also tangs according to Appellant's own use of the terms. Second, on page 10 of the Brief Appellant also defined the tangs as being partially severed from the backing plate. Examiner notes that figure 1 shows the tangs (2) of Newell are partially severed from the backing plate in an annular fashion. Finally, Appellant shows in another embodiment of the instant invention the projections or tangs shown in the area of the end of the lead lines of 48 and 50 being shaped similar tangs (2) of Newell. See the embodiment of figures 11 and 12 of the instant invention.

On pg. 11 of the Brief Appellant argues that in Newell the fasteners are not spaced from *each of* the tangs. Examiner notes that the argument is slightly more specific than the claim language. Claim 65, for example, merely requires that the preassembled fasteners be "spaced from the tangs". Examiner maintains that, as broadly recited, the fasteners located on the left side of the assembly are spaced from the tangs located on the right side of the assembly. Appellant further argues on page 11 of the Brief that there is no facilitation of alignment using the preassembled fasteners in Newell. To support his argument, Appellant states that the tangs (2) have to align with the receptacles (7) before the fasteners are inserted. Examiner disagrees and

notes that the fasteners (17) of Newell are clearly shown in figure 6 to be longer than the tangs. Newell also discloses that the fasteners (17) form a part of a preassembled assembly that is later attached to element (23). Since the fasteners (17) are preassembled and longer than the tangs, Examiner maintains that they will facilitate alignment of the tangs with the receptacles to the same extent that Appellant's invention provides this function.

On page 12 of the Brief Appellant argues that claims 71 and 80 are not satisfied by Newell since in col. 4 lines 6-7 Newell mentions that the molded lining will not flow through opening (9). Examiner notes that the argument is more specific than the claim language. The claims are directed to the tang opening which in Newell would be comparable to the area of element (7). Examiner notes that the lining in Newell is molded partially through the tang opening shown in the area of element (7) as shown in figure 6 as required by the claim limitation. Appellant also states that tangs (2) of Newell are the wrong shape to resist shear forces between the brake plate and the brake shoe. Examiner disagrees and notes that tangs (2) are shaped in such a way that they project or extend outwardly from the brake plate (1, 21) to the brake shoe (23) so they function to resist shear forces between the brake plate and the brake shoe to the same extent as Appellant's invention does.

Appellant then argues on page 13 of the Brief that the tangs/projections are not formed by punched part of the brake plate. Examiner notes that claims 76 and 87 are product claims and that MPEP 2113 states that the patentability of a product does not depend on its method of production. Figure 6 of Newell shows that the tangs (2) are

formed from the brake plate (1, 21). If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Finally, in the last paragraph on page 13 of the Brief Appellant suggests that the Sallenave reference is non-analogous by arguing that Sallenave does not deal with brakes. Examiner maintains that while the Sallenave reference is in a field different from that of Appellant's endeavor, the Sallenave reference is considered to be reasonably pertinent since it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole. See MPEP 2141.01(a). Examiner maintains that an inventor trying to find a way to securely attach two components together would reasonably consider the use of threaded stud bolts 4 that clinch components together as taught by Sallenave. Examiner notes that while Appellant claimed a threaded clinch stud bolt, the instant specification uses the terms "clinch bolt" and "stud" as if they are different types of fasteners. See paragraph [0030], [0057], or [0060] of the instant application.

Accordingly, the rejections have been maintained.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/mmb/

December 9, 2010

/Melody M. Burch/

Primary Examiner, Art Unit 3657

Conferees:

Marc Jimenez /MJ/

Robert Siconolfi /RS/